

2007 Senate Bill 122

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2007 WISCONSIN ACT 19

AN ACT *to renumber and amend* 70.11 (21) (a); *to amend* 74.35 (2m), 74.35 (5) (d), 76.025 (1), 76.81, 77.54 (26), 79.04 (1) (a) and 79.04 (2) (a); and *to create* 70.11 (21) (ab) of the statutes; **relating to:** the property tax exemption for waste treatment facilities.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 70.11 (21) (a) of the statutes is renumbered 70.11 (21) (am) and amended to read:

70.11 (21) (am) All property purchased or constructed as a waste treatment facility used ~~for the treatment of exclusively and directly to remove, store, or cause a physical or chemical change in~~ industrial wastes, as defined in s. 281.01 (5), waste or air contaminants, as defined in s. 285.01 (1), but not for other wastes, as defined in s. 281.01 (7), for the purpose of abating or eliminating pollution of surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale and, if the property's owner is taxed under ch. 76, if the property is approved by the department of revenue. ~~For the purposes of this subsection, "industrial waste" also includes wood chips, sawdust, and other wood residue from the paper and wood products manufacturing process that can be used as fuel and would otherwise be considered superfluous, discarded, or fugitive material.~~ The department of natural resources and department of health and family services shall make recommendations upon request to the department of revenue regarding such property. All property purchased or upon which construction began prior to July 31, 1975, shall be subject to s. 70.11 (21), 1973 stats.

SECTION 2. 70.11 (21) (ab) of the statutes is created to read:

70.11 (21) (ab) In this subsection:

1. "Air contaminants" has the meaning given in s. 285.01 (1).

2. "Industrial waste" means waste resulting from any process of industry, trade, or business, or the development of any natural resource, that has no monetary or market value, except as provided in subd. 3. b., and that would otherwise be considered superfluous, discarded, or fugitive material. "Industrial waste" does not include other wastes, as defined in s. 281.01 (7).

3. "Used exclusively" means to the exclusion of all other uses except any of the following:

a. For other use not exceeding 5 percent of total use.

b. To produce heat or steam for a manufacturing process, if the fuel consists of either 95 percent or more industrial waste that would otherwise be considered superfluous, discarded, or fugitive material or 50 percent or more of wood chips, sawdust, or other wood residue from the paper and wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material.

SECTION 3. 74.35 (2m) of the statutes is amended to read:

* Section 991.11, WISCONSIN STATUTES 2005-06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

74.35 (2m) EXCLUSIVE PROCEDURE. A claim that property is exempt, other than a claim that property is exempt under s. 70.11 (21) (a) or (27), may be made only in an action under this section. Such a claim may not be made by means of an action under s. 74.33 or an action for a declaratory judgment under s. 806.04.

SECTION 4. 74.35 (5) (d) of the statutes is amended to read:

74.35 (5) (d) No claim may be made under this section based on the contention that the tax was unlawful because the property is exempt from taxation under s. 70.11 (21) (a) or (27).

SECTION 5. 76.025 (1) of the statutes is amended to read:

76.025 (1) The property taxable under s. 76.13 shall include all franchises, and all real and personal property of the company used or employed in the operation of its business, excluding property that is exempt from the property tax under s. 70.11 (39) and (39m), such motor vehicles as are exempt under s. 70.112 (5) and treatment plant and pollution abatement equipment exempt under s. 70.11 (21) (a). The taxable property shall include all title and interest of the company referred to in such property as owner, lessee or otherwise, and in case any portion of the property is jointly used by 2 or more companies, the unit assessment shall include and cover a proportionate share of that portion of the property jointly used so that the assessments of the property of all companies having any rights, title or interest of any kind or nature whatsoever in any such property jointly used shall, in the aggregate, include only one total full value of such property.

SECTION 6. 76.81 of the statutes is amended to read:

76.81 Imposition. There is imposed a tax on the real property of, and the tangible personal property of, every telephone company, excluding property that is exempt from the property tax under s. 70.11 (39) and (39m), motor vehicles that are exempt under s. 70.112 (5), property that is used less than 50% in the operation of a telephone company, as provided under s. 70.112 (4) (b), and treatment plant and pollution abatement equipment that is exempt under s. 70.11 (21) (a). Except as provided in s. 76.815, the rate for the tax imposed on each description of real property and on each item of tangible personal property is the net rate for the prior year for the tax under ch. 70 in the taxing jurisdictions where the description or item is located. The real and tangible personal property of a telephone company shall be assessed as provided under s. 70.112 (4) (b).

SECTION 7. 77.54 (26) of the statutes is amended to read:

77.54 (26) The gross receipts from the sales of and the storage, use, or other consumption of tangible personal property which becomes a component part of an industrial waste treatment facility that is exempt under s. 70.11 (21) (a) or that would be exempt under s. 70.11 (21) (a) if the property were taxable under ch. 70, or tangible

personal property which becomes a component part of a waste treatment facility of this state or any agency thereof, or any political subdivision of the state or agency thereof as provided in s. 40.02 (28). The exemption includes replacement parts therefor, and also applies to chemicals and supplies used or consumed in operating a waste treatment facility and to purchases of tangible personal property made by construction contractors who transfer such property to their customers in fulfillment of a real property construction activity. This exemption does not apply to tangible personal property installed in fulfillment of a written construction contract entered into, or a formal written bid made, prior to July 31, 1975.

SECTION 8. 79.04 (1) (a) of the statutes is amended to read:

79.04 (1) (a) An amount from the shared revenue account or, for the distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats., determined by multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or village, the first \$125,000,000 of the amount shown in the account, plus leased property, of each public utility except qualified wholesale electric companies, as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for "production plant, exclusive of land," "general structures," and "substations," in the case of light, heat and power companies, electric cooperatives or municipal electric companies, for all property within a municipality in accordance with the system of accounts established by the public service commission or rural electrification administration, less depreciation thereon as determined by the department of revenue and less the value of treatment plant and pollution abatement equipment, as defined under s. 70.11 (21) (a), as determined by the department of revenue plus an amount from the shared revenue account or, for the distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats., determined by multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or village, of the first \$125,000,000 of the total original cost of production plant, general structures, and substations less depreciation, land and approved waste treatment facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the department of revenue of all property within the municipality. The total of amounts, as depreciated, from the accounts of all public utilities for the same production plant is also limited to not more than \$125,000,000. The amount distributable to a municipality under this subsection and sub. (6) in any year shall not exceed \$300 times the population of the municipality.

SECTION 9. 79.04 (2) (a) of the statutes is amended to read:

79.04 (2) (a) Annually, except for production plants that begin operation after December 31, 2003, or begin operation as a repowered production plant after December 31, 2003, the department of administration, upon cer-

tification by the department of revenue, shall distribute from the shared revenue account or, for the distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats., to any county having within its boundaries a production plant, general structure, or substation, used by a light, heat or power company assessed under s. 76.28 (2) or 76.29 (2), except property described in s. 66.0813 unless the production plant or substation is owned or operated by a local governmental unit that is located outside of the municipality in which the production plant or substation is located, or by an electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a municipal electric company under s. 66.0825 an amount determined by multiplying by 6 mills in the case of property in a town and by 3 mills in the case of property in a city or village the first \$125,000,000 of the amount shown in the account, plus leased property, of each public utility except qualified wholesale electric companies, as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for "production plant, exclusive of land," "general structures," and "substations," in the case of light, heat and power companies, electric cooperatives or municipal electric companies, for all property within the municipality in accordance with the system of accounts established by the public service commission or rural electrification administration, less depreciation thereon as determined by the department of revenue and less the value of treatment plant and pollution abatement equipment, as defined under s. 70.11 (21) (a), as determined by the department of revenue plus an amount from the shared revenue account or, for the distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats., determined by multiplying by 6 mills in the case of property in a town, and 3 mills in the case of property in a city or village, of the total original cost of production plant, general structures, and substations less depreciation, land and approved waste treatment facilities of each qualified wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the department of revenue of all property within the municipality. The total of amounts,

as depreciated, from the accounts of all public utilities for the same production plant is also limited to not more than \$125,000,000. The amount distributable to a county under this subsection and sub. (6) in any year shall not exceed \$100 times the population of the county.

SECTION 10. Nonstatutory provisions.

(1) **PROPERTY TAX EXEMPTION.** Notwithstanding any other provision of chapter 70 of the statutes, property tax assessments under section 70.11 (21) of the statutes, as affected by this act, as of January 1, 2007, supersede any other property tax assessments under section 70.11 (21), 2005 stats., for property tax assessments as of January 1, 2007, that are made prior to the effective date of this subsection. Notwithstanding sections 70.47 (7) and 70.995 (8) of the statutes, an objection to a property tax assessment under section 70.11 (21) of the statutes, as affected by this act, for property tax assessments as of January 1, 2007, may be filed no later than 60 days after the effective date of this subsection or no later than the time allowed under sections 70.47 (7) and 70.995 (8) of the statutes, whichever is later.

(2) **SALES AND USE TAX EXEMPTION.** Section 77.54 (26) of the statutes, as affected by this act, does not apply to tangible personal property purchased in fulfillment of a contract to construct, repair, or improve a waste treatment facility, if the contract is entered into, or a formal bid is made, prior to the effective date of this subsection and the tangible personal property is affixed to and made a structural part of the waste treatment facility.

SECTION 11. Initial applicability.

(1) The treatment of sections 70.11 (21) (a) and (ab) and 74.35 (2m) and (5) (d) of the statutes first applies retroactively to the property tax assessments as of January 1, 2007.

SECTION 12. Effective dates. This act takes effect retroactively on January 1, 2007, except as follows:

(1) The treatment of section 77.54 (26) of the statutes takes effect on the first day of the 2nd month beginning after publication.